

FCC MAIL SECTION

Before the
Federal Communications Commission
SEP 22 11 32
Washington, D.C. 20554DISPATCHED
MM Docket No. 92-211 ✓

In the Matter of

Amendment of Section 73.202(b), RM-8061
Table of Allotments,
FM Broadcast Stations.
(Lumberton, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: August 24, 1992; Released: September 22, 1992

Comment Date: November 13, 1992

Reply Comment Date: November 30, 1992

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Stone-Lamar Broadcast Services Corporation ("petitioner") requesting the substitution of Channel 237C1 for Channel 237C2 at Lumberton, Mississippi. Petitioner also requests modification of its license for Station WLUN, Channel 237C2, to specify operation on Channel 237C1.¹ Petitioner submitted information in support of the proposal and expressed its intention to apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration. Channel 237C1 can be allotted to Lumberton, Mississippi, consistent with the Commission's spacing requirements at petitioner's specified site.² Channel 237C1 is short spaced to Channel 237A, Station WJBD-FM, Thomasville, Alabama. However, the license for Station WJBD-FM, 237A, was modified in MM Docket 90-563 to specify operation on Channel 237C2.³ Channel 237C1 is also short spaced to the allotment site for Channel 235C, Mobile, Alabama. However, Station WKSJ-FM, Mobile, has a construction permit for Channel 235C that is fully spaced to Channel 237C1 at Lumberton (BMPH-900427ID). Therefore, the grant of a license for Channel 237C1 at Lumberton may be withheld until Station WJBD-FM and Station WKSJ-FM are licensed on their new channels. We shall also propose to modify the license for Station WLUN, Channel 237C2, to specify operation on Channel 237C1 in accordance with Section 1.420(g) of the Commission's Rules.

3. In view of the above, we believe it would serve the public interest to seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Lumberton, Mississippi, as reflected below:

	Channel No.
City	Present
Lumberton, Mississippi	237C2
	Proposed
	237C1

4. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Order to the following:

Capitol Broadcasting Corporation 917 Western American Cir. Mobile, Alabama 36609 (Licensee of Station WKSJ-FM)	Laura B. Humphries P.O. Box 1913 Morristown, New Jersey 07962-1913 (Assignee of license for Station WKSJ-FM)
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Griffin Broadcasting Corporation
832 Patridge Lane
Albany, Georgia 31707
(Licensee of Station WJDB-FM)

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before November 13, 1992, and reply comments on or before November 30, 1992, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

John S. Neely
Miller & Miller, P.C.
P.O. Box 33003
Washington, D.C. 20033

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

¹ The license for Station WLUN was modified in MM Docket 89-577 to specify operation on Channel 237C2 in lieu of Channel 237A. See 5 FCC Rcd 5269 (1990). Petitioner holds a construction permit for Channel 237C2 (BPH-901116IC) that expires on September 26, 1992.

² The coordinates for Channel 237C1 are 30-39-34 and 89-09-59.

³ See *Report and Order* released July 15, 1992 (57 FR 31970, July 20, 1992).

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.